

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 9669 of 1998

For Approval and Signature:

Hon'ble MR.JUSTICE R.BALIA.

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES
2. To be referred to the Reporter or not? : YES
3. Whether Their Lordships wish to see the fair copy of the judgement? : NO
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO
5. Whether it is to be circulated to the Civil Judge? : NO

HIRUBHAI M PATEL

Versus

STATE OF GUJARAT

Appearance:

MR AM RAVAL for Petitioner

MR SP HASURKAR WITH MRS HANSA PUNANI for Respondents

CORAM : MR.JUSTICE R.BALIA.

Date of decision: 29/09/1999

ORAL JUDGEMENT

1. Heard learned counsel for the parties. The petitioner has filed this petition challenging deductions made from his pension inter alia on the ground that no deduction from pension is permissible.

2. The petitioner retired on 30th September, 1981 and continued to occupy the government accommodation until 31/1/93. By order of Executive Engineer dated 3/12/93, Exh. 'A' annexed to the petition, amount of rent at market rate and gas charges for the period 1/10/81 to 1/2/93 came to be fixed at Rs.1,04,617=70 recoverable from the petitioner. The same is being recovered through deductions from pension at different rates from time to time; for which treasury officer was informed. The petitioner has contended in the petition that he was not in unauthorised occupation of the premises inasmuch as in Special Civil Application No. 3146/81 filed by him, he has been allowed protection against eviction from premises by way of interim relief. He relied on decision of the Supreme Court in the case of Union of India and another V/s R.R.Hingorani [Retd] reported in AIR 1987 SC 808 for the purpose of contending that no amount is permissible to be deducted from pension unless authorised by the petitioner.

2. A reply affidavit has been filed by the respondents stating that the petitioner retired from service on 30/9/1981 and as per rules, within two months i.e. on or before 30th November 1981, the government quarters were to be vacated by him. However, the petitioner vacated the same on 31st January, 1993 and thus, he overstayed for 11 years and 4 month for which period he was liable to pay the rent at the market rate as damages for use and occupation. That sum was determined by the respondent No.4 Executive Engineer, the competent officer for that purpose way back in December 1993 at Rs.1,04,617=70. The total amount payable by the petitioner for the over stayed period by way of rent and interest for delayed payment was modified later on at Rs.1,04,581/-. On finding a discrepancy of Rs.32.70 ps. out of said sum, Rs.67,201/- has been recovered through deducted from the pension at different rates from time to time and balance of Rs.37,380/- still remains outstanding. Learned AGP also pointed out the decision of the Supreme Court in the case of Union of India V/s Sisir Kumar Deb reported in 1999 SCC [L & S] 781, stating that in this later decision, the Supreme Court has taken a different view of the matter about deductibility of the amount of rent for overstaying in the government premises after retirement from the pensionary reliefs.

3. It is undoubtedly true that, in R.R.Hingorani's case [supra], Supreme Court has categorically stated that the amount due from an employee for occupying the government quarter cannot be deducted from the money due or that becomes due on account of pension which include commuted pension also as per the provisions of the

Pension Act. That was a case in which a government servant had retained government accommodation allotted to him beyond concessional period of two months permissible under the rules. Thereafter, the liability to pay the damages equivalent to the market rent for the period of such unauthorised occupation was sought to be recovered by deduction from amount of commuted pension payable to the incumbent. The ratio of case supports the contention of the petitioner.

4. However, in the like circumstances, in the case of Sisir Kumar Deb [supra], which is a later decision and is also of a Larger Bench, the apex Court has set aside the order of the Central Administrative Tribunal directing the refund of the deductions made out of pensionary reliefs on account of the damages payable for overstaying in the government accommodation after retirement. It was a case in which the incumbent, an employee of railway who had retired but failed to vacate the quarter occupied by him for which an order was made by the Central Administrative Tribunal to vacate the premises. Still the incumbent did not vacate the premises. Thereafter, when the railway administration sought to deduct the amount due as payable as damages for use and occupation of the government accommodation by deducting the same from the pensionary relief admissible to the incumbent, he again approached the Central Administrative Tribunal which stayed the recovery of further sums by deductions from the pensionary relief and also directed the refund of the amount already deducted. Union of India preferred an appeal against the said order of the Tribunal.

5. Apart from the undue advantage resulting to the incumbent for continued unauthorised occupation of the premises as a consequence of the order, the Court observed,

"No valid ground has been given for not permitting the deduction to the Department. we find it difficult to comprehend the rationale for the view taken by the Judicial member. Instead of ensuring delivery of possession from a person who, in violation of the Tribunal's order, was continuing to occupy the quarter and who could not have been said to have approached the Tribunal with clean hands."

While allowing the appeal and setting aside the order of the Tribunal, the Court further directed the incumbent to handover the vacant possession of the

premises within 15 days and left the railway administration free to recover its dues from any amount payable to the incumbent and if the same falls short, the difference in accordance with law.

6. This decision supports the plea of the respondents that the amount which is due from the retired employee as damages for use and occupation of the government accommodation for overstaying after retirement can be recovered from the pensionary reliefs payable to the incumbent. Though the earlier decision of the Supreme Court in R.R.Hingorani's case [supra], have not been referred to, this case being of a later date and of a Larger Bench, binds this Court and must be taken to govern the present case.

7. Accordingly, the petitioner cannot succeed on the ground that the amount payable by him as damages for overstaying for the period between December 1981 to January 1993 cannot be deducted from pension unless authorised by him.

8. The other contention has been raised by the petitioner that the amount of damages determined by the respondent No.4 is without notice to him and cannot be considered as deductible. This contention of the learned counsel for the petitioner also cannot be accepted in view of the decision in R.R.Hingorani's case [supra]. In the said case, in the like circumstances, the Court has said that the government was competent to recover the rent at a market rate and it was not necessary to serve the prior notice to the allottee.

9. Moreover, on petitioner's own showing. it is apparent that the total sum recoverable from him as rent at market rate was determined by Executive Engineer way back in December 1993 and petitioner was informed about it by registered post. He never challenged the determination of such amount. It is also not in dispute that while this court allowed the petitioner's protection against eviction from government accommodation, it ensured that the petitioner shall be liable to pay rent for such continued occupation after retirement as per the rules. Through out certain amount was being deducted from pension of the petitioner by way of his liability to pay rent for continued occupation of government house since October 1981 until 1998 without demur. In the circumstances, apart from the fact that challenge to computation of amount recoverable and its deductions from pension will not only liable to be rejected on the ground of delay, but it is legitimate to infer that petitioner

has no objection to raise against the determination of amount payable by him for the occupation of Government accommodation after retirement until it was vacated and recovery of the sum due from him on account of his liability to pay rent for the period for which he occupied the same until the amount is finally recovered, through deduction from his pension. Strictly speaking question of applying ratio of decision in Hingorani's case really does not apply in the present case.

10. In the circumstances, this petition fails and is hereby dismissed. It will however be open for the petitioner to make a representation to the competent officer for granting relief in computation of interest payable on the amount of rent determined for the period overstayed by the petitioner which has been vacated since 1993. Rule discharged. No orders as to costs.

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